

PROVIDING FOR CONSIDERATION OF THE BILL (H.R. 3867) TO UPDATE
AND EXPAND THE PROCUREMENT PROGRAMS OF THE SMALL BUSINESS
ADMINISTRATION, AND FOR OTHER PURPOSES

OCTOBER 24, 2007.—Referred to the House Calendar and ordered to be printed

Mr. CARDOZA, from the Committee on Rules,
submitted the following

R E P O R T

[To accompany H. Res. 773]

The Committee on Rules, having had under consideration House Resolution 773, by a voice vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 3867, the “Small Business Contracting Improvements Act,” under a structured rule. The resolution provides one hour of general debate equally divided and controlled by the chairman and ranking minority member of the Committee on Small Business.

The resolution waives all points of order against consideration of the bill except those arising under clause 9 or 10 of rule XXI. The resolution provides that the bill shall be considered as read. The resolution waives all points of order against provisions of the bill. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).

The resolution makes in order only those amendments printed in this report. Amendments so printed may be offered only in the order printed in this report, may be offered only by a Member designated in this report, shall be considered as read, shall be debatable for the time specified in this report equally divided and controlled by a proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The resolution waives all points of order against such amendments except those arising under clause 9 or 10 of rule XXI.

The resolution provides one motion to recommit the bill with or without instructions. Finally, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

EXPLANATION OF WAIVERS

The waiver of all points of order against consideration of the bill (except for those arising under clause 9 or 10 of rule XXI) includes a waiver of clause 4(a) of rule XIII (availability of committee report). Although the rule waives all points of order against provisions of the bill, the Committee is not aware of any points of order against the bill. The waiver of all points of order against provisions of the bill is prophylactic in nature.

COMMITTEE VOTES

The results of each record vote on an amendment or motion to report, together with the names of those voting for and against, are printed below:

Rules Committee record vote No. 363

Date: October 24, 2007.

Measure: H.R. 3867.

Motion by: Mr. Hastings (WA).

Summary of motion: To grant an open rule.

Results: Defeated 2–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Castor—Nay; Arcuri—Nay; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 364

Date: October 24, 2007.

Measure: H.R. 3867.

Motion by: Mr. Hastings (WA).

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. King (IA), which would strike section 101(b).

Results: Defeated 2–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Castor—Nay; Arcuri—Nay; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

Rules Committee record vote No. 365

Date: October 24, 2007.

Measure: H.R. 3867.

Motion by: Mr. Sessions.

Summary of motion: To make in order and provide appropriate waivers for an amendment by Rep. Buchanan (FL), which would state that if there are two or more eligible HUBZone firms and one is controlled by a veteran (not service-disabled), then, everything being equal, the veteran-owned HUBZone firm should get the contract.

Results: Defeated 2–7.

Vote by Members: McGovern—Nay; Hastings (FL)—Nay; Matsui—Nay; Cardoza—Nay; Castor—Nay; Arcuri—Nay; Hastings (WA)—Yea; Sessions—Yea; Slaughter—Nay.

SUMMARY OF AMENDMENTS MADE IN ORDER

(Summaries derived from information provided by sponsors.)

1. Velázquez (NY): This amendment would establish that those veterans who are severely disabled shall be given special consideration as agencies implement contracting regulations. It would also set forth certain standards for business integrity that are required for participation in federal contracting programs. Additionally, the amendment would clarify the implementation of the women's procurement program. (10 minutes)

2. Akin (MO): The amendment would require that the Administrator of the Small Business Administration (SBA) conduct a study to determine what changes would be required to provide greater Federal contracting assistance to participants in the program created by section 8(a) of the Small Business Act that have less equity in their business concerns than other participants in the program. The study would be reported no later than six months after the date of enactment of this Act and the Administrator would report the details of the study to the Senate Small Business Committee and the House Small Business Committee. (10 minutes)

3. Welch (VT)/Braley (IA): The amendment would require the Administrator of the Small Business Administration to carry out a study on the effectiveness of the HUBZone program in reaching rural areas. (10 minutes)

4. Mica (FL): This amendment would clarify that the small business set-aside provisions of the Small Business Act (15 U.S.C. 644) should apply to federal contracts not excluding Federal Supply Schedule and Multiple Award Schedule holders. (10 minutes)

5. Mica (FL): The amendment would state that it is the sense of the House that small business set-asides should not be excluded from any acquisitions under the GSA's Federal Supply Schedule. (10 minutes)

6. Moran, James (VA): The amendment would require that the Administrator of the Small Business Administration conduct a study to determine, with respect to small business contracts, whether incumbent Federal contractors are submitting frivolous protests to extend the length of current contracts before protest decisions are resolved. The Administrator also would develop recommendations to discourage frivolous protests. (10 minutes)

7. Baird (WA): This amendment would direct the Administrator of the Small Business Administration to examine the lists of groups the members of which are presumed to be socially disadvantaged under the Small Disadvantaged Business program under section 8(a) of the Small Business Act and to consider whether the list should be updated to include additional groups. (10 minutes)

8. Brown-Waite (FL): The amendment would create a liaison within the Small Business Administration whose duty, in consultation with the Assistant Secretary of the Department of Homeland Security for U.S. Immigration and Customs Enforcement, is to ensure that section 2(i) of the Small Business Act, regarding assistance to individuals not lawfully within the United States, is carried out. (10 minutes)

9. Gillibrand (NY): The amendment provides that any employer found, based on a determination by the Department of Homeland Security or the Attorney General to have engaged in a pattern or practice of hiring, recruiting or referring for a fee, for employment in the United States an alien knowing the person is an unauthor-

ized alien shall be subject to debarment from the receipt of future Federal contracts. (10 minutes)

10. Lampson (TX): The amendment would prohibit the use of any funds for first-class or business-class airline travel by agency employees when carrying out the provisions of H.R. 3867. The amendment includes exceptions provided by the Code of Federal Regulations 301–10.122 to 10.124, as applicable to federal agency employees. (10 minutes)

TEXT OF AMENDMENTS MADE IN ORDER

1. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE VELÁZQUEZ OF NEW YORK, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title I, add the following:

SEC. 104. PRIORITY FOR SEVERELY DISABLED VETERANS.

In developing regulations to implement section 101, the Administrator shall give a priority to those certified service-disabled veterans that are severely disabled.

Amend section 201 to read as follows:

SEC. 201. REQUIRING BUSINESS INTEGRITY OF SMALL BUSINESS CONCERNS.

Section 8 of the Small Business Act (15 U.S.C. 637) is amended by adding at the end the following new subsection:

“(o) REQUIREMENT OF BUSINESS INTEGRITY.—No small business concern may receive any benefit under section 8(a), 8(m), 31(b)(2)(A), 31(b)(2)(B), 36(a), or 36(b) unless the Administrator first performs a background check on the owners and officers of such small business concern and determines that the owners and officers do not lack business integrity. For purposes of such a determination, previous criminal convictions will create a presumption of a lack of business integrity.”

At the end of title II, add the following (and amend the table of contents accordingly):

SEC. 205. EXPANDING PROTEST AUTHORIZATION.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding at the end the following new paragraphs:

“(22) Rules similar to the rules of paragraphs (5) and (6) of subsection (m) shall apply for purposes of this subsection.

“(23) For the purposes of challenging the eligibility of a small business concern to receive an award under section 8(a), 8(m), 31(b)(2)(A), 31(b)(2)(B), 36(a), or 36(b), the term ‘interested party’ shall include any small business concern.”

In section 8(m)(4) of the Small Business Act as proposed to be added by section 301, strike subparagraph (B) and insert the following:

“(B) UNDERREPRESENTED INDUSTRIES.—Until such time as the Administrator completes the identification of industries required by subparagraph (A), the following industries, as identified by their 2-Digit North American Industry Classification System Code, are deemed underrepresented by women in Federal contracting: 11 (Forestry), 21 (Mining), 22 (Utilities), 23 (Construction), 31 (Manufacturing), 32 (Manufacturing), 33 (Manufacturing), 42 (Wholesale Trade), 44 (Retail Trade), 45 (Retail Trade), 48

(Transportation), 49 (Transportation), 51 (Information), 52 (Finance and Insurance), 53 (Real Estate and Rental and Leasing), 54 (Professional, Scientific, and Technical Services), 56 (Administrative and Support, Waste Management, and Remediation Services), 61 (Education Services), 62 (Health Care and Social Assistance), 71 (Arts, Entertainment, and Recreation), 72 (Accommodation and Food Services), and 81 (Other Services).”.

Strike sections 403 and 504.

2. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE AKIN OF MISSOURI, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title V, add the following new section (and amend the table of contents accordingly):

SEC. 505. ASSISTANCE STUDY.

(a) STUDY.—The Administrator of the Small Business Administration shall conduct a study to determine what changes would be required to provide greater Federal contracting assistance to participants in the program created by section 8(a) of the Small Business Act that have less equity in their business concerns than other participants in the program.

(b) REPORT.—Not later than 6 months after the date of the enactment of this Act, the Administrator shall submit to the Committee on Small Business and Entrepreneurship of the Senate and the Committee on Small Business of the House of Representatives a report detailing the results of the study described in subsection (a).

3. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE WELCH OF VERMONT, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Title IV, add at the end the following (and amend the table of contents accordingly):

SEC. ____ . STUDY ON EFFECTIVENESS OF HUBZONE PROGRAM IN REACHING RURAL AREAS.

The Administrator of the Small Business Administration shall carry out a study on the effectiveness of the HUBZone program in reaching rural areas to determine whether there are needy areas that do not qualify under the program and whether there are areas that currently qualify under the program that are inconsistent with the program’s original intent. Not later than 6 months after the date of the enactment of this Act, the Administrator shall submit to Congress a report containing the results of the study and any recommendations that the Administrator considers appropriate for alternative ways to evaluate eligibility for HUBZones in rural areas.

4. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MICA OF FLORIDA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Add at the end of title VI the following (and amend the table of contents accordingly):

SEC. ____ . CLARIFICATION OF APPLICABILITY OF SMALL BUSINESS SET-ASIDES.

Section 15 of the Small Business Act (15 U.S.C. 644) is amended by adding at the end the following:

“(q) CLARIFICATION OF APPLICABILITY.—For purposes of any small business set-asides authorized under this section, the term ‘contract’ shall not exclude any acquisition or order under any Federal Supply Schedule or Multiple Award Schedule.”.

5. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MICA OF FLORIDA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title VI, add the following (and amend the table of contents accordingly):

SEC. ____ . SENSE OF THE HOUSE OF REPRESENTATIVES ON ACQUISITIONS CONDUCTED UNDER THE GENERAL SERVICES ADMINISTRATION'S FEDERAL SUPPLY SCHEDULE.

(a) FINDINGS.—Congress finds the following:

(1) The Small Business Act was adopted by Congress to ensure that small business concerns receive fair access to, and a fair share of, Federal government contracts and subcontracts.

(2) There is a disagreement between the General Services Administration and the Small Business Administration on whether the Small Business Act applies to the acquisitions under the General Services Administration's Federal Supply Schedule, which account for over \$30,000,000,000 in procurement dollars awarded each year.

(3) As demonstrated in proceedings of the White House Acquisition Advisory Panel, small businesses hold 79.6 percent of contracts under the Federal Supply Schedule, but receive only 37.1 percent of dollars awarded under the Federal Supply Schedule, and this disparity has a significant impact on the competitive viability of small business concerns in government contracting.

(b) SENSE OF THE HOUSE.—Therefore, it is the sense of the House of Representatives that small business set-asides should not be excluded from any acquisitions under the General Services Administration's Federal Supply Schedule.

6. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE MORAN OF VIRGINIA, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

Title VI, add at the end the following (and amend the table of contents accordingly):

SEC. ____ . STUDY ON FRIVOLOUS PROTESTS.

(a) STUDY.—The Administrator of the Small Business Administration shall conduct a study to determine, with respect to small business contracts, whether incumbent Federal contractors submit frivolous protests to extend the length of current contracts before protest decisions are resolved.

(b) CONTENTS.—In conducting the study, the Administrator shall—

(1) determine the number of Government Accountability Office bid protests and Small Business Administration size protests filed by incumbent Federal contractors with respect to

small business contracts, the number of incumbent contracts extended because of the protest, the extra costs of extending incumbent contracts during the protest, and the final rulings of these protests;

(2) determine the financial impact of protests filed by incumbent Federal contractors on small businesses that were originally awarded the protested small business contracts, including costs associated with defending the protests and costs incurred by Federal agencies;

(3) identify the incumbent Federal contractors that file the most unsuccessful protests on small business contracts; and

(4) develop recommendations—

(A) to ease any financial burden on small businesses during the protest of small business contracts; and

(B) to discourage frivolous protests by incumbent Federal contractors on small business contracts.

(c) CONSULTATION.—In conducting the study, the Administrator shall consult with the Government Accountability Office, any necessary Federal agencies, and the Office of Federal Procurement Policy.

(d) REPORT.—Not later than 180 days after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of the study, together with the recommendations developed under subsection (b)(4).

7. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BAIRD OF WASHINGTON, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title V, insert the following new section (and amend the table of contents accordingly):

SEC. 505. EXAMINATION OF LIST OF GROUPS THE MEMBERS OF WHICH ARE PRESUMED TO BE SOCIALLY DISADVANTAGED FOR PURPOSES OF SMALL DISADVANTAGED BUSINESS PROGRAM.

The Administrator of the Small Business Administration shall examine the list of groups the members of which are presumed to be socially disadvantaged for purposes of the Small Disadvantaged Business program under section 8(a) of the Small Business Act and shall consider whether the list should be updated to include additional groups. Not later than 6 months after the date of the enactment of this Act, the Administrator shall submit to Congress a report on the results of the examination.

8. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE BROWN-WAITE OF FLORIDA, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title VI, add the following new section (and amend the table of contents accordingly):

SEC. 602. SMALL BUSINESS ADMINISTRATION LIAISON.

(a) ESTABLISHMENT.—The Administrator of the Small Business Administration shall create a liaison position whose duty it is to ensure that section 2(i) of the Small Business Act is carried out.

(b) FUNCTIONS.—In carrying out the duty described in subsection (a), the liaison shall consult with the Assistant Secretary of the De-

partment of Homeland Security for United States Immigration and Customs Enforcement.

9. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE GILLIBRAND OF NEW YORK, OR HER DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title II, add the following (and amend the table of contents accordingly):

SEC. ____ . PROHIBITION ON CONTRACT AWARDS TO CONTRACTORS IN VIOLATION OF IMMIGRATION LAWS.

Any employer found, based on a determination by the Secretary of Homeland Security or the Attorney General to have engaged in a pattern or practice of hiring, recruiting or referring for a fee, for employment in the United States an alien knowing the person is an unauthorized alien shall be subject to debarment from the receipt of future Federal contracts under this Act.

10. AN AMENDMENT TO BE OFFERED BY REPRESENTATIVE LAMPSON OF TEXAS, OR HIS DESIGNEE, DEBATABLE FOR 10 MINUTES

At the end of title VI, add the following:

SEC. ____ . PROHIBITION ON BUSINESS-CLASS OR FIRST-CLASS AIRLINE TRAVEL.

In carrying out the provisions of the Small Business Contracting Program Improvements Act, the Small Business Administrator or any employee may not purchase business-class or first-class airline travel in contravention of sections 301–10.122 through 301.10–124 of title 41, Code of Federal Regulations.